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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 2 Miscellaneous

STEPHEN S. CHANDLER, UNITED STATES DISTRICT JUDGE
FOR THE WESTERN DISTRICT OF OKLAHOMA,

Petitioner,

v.

JUDICIAL COUNCIL OF THE TENTH CIRCUIT
OF THE UNITED STATES,

Respondent.

ON PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

BRIEF OF PETITIONER AND WAIVER OF ORAL ARGUMENT

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United States Courthouse
Oklahoma City, Oklahoma
73101

Pro se

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The Court on June 16, 1969, denied Petitioner's Motion to Advance this action for decision before the summer recess and entered an order setting it for Oral Argument on October 20, 1969.

There were only two courses open to the United States District Judge, Petitioner herein, when the unprecedented Writ issued by the Judicial Council of the Tenth Circuit was served on him. FIRST, to himself officially cite and punish

for contempt the Circuit Judges who signed it, and those aiding and abetting them, and to request the Executive Department to institute criminal proceedings against them for unlawfully obstructing and impeding justice in his court. SECOND, to seek immediate stay, injunctive relief and adjudication of his rights from this Court which has final appellate and review jurisdiction over the cases affected.

He chose the latter course as being more judicious and less likely to further undermine public confidence in the Federal Judiciary.

No other court was available. The astonishing "Order" which constituted a multiple Extraordinary Writ of Prohibition in all of the cases in which he was sitting and convicted him of dereliction in office without trial was signed by the judges of the Court of Appeals. The judges of that court had already acted and the Petition here may properly be considered an Application for Writ of Certiorari.

The voluntary self-serving actions of the Circuit Judges since the filing of this action cannot enlarge, change or alter the record or the issues involved. The raw disciplinary nature of the original "Order" cannot be obscured by the Council's later shamefaced attempt to characterize it as an effort to clean up a district court's docket. The subsequent orders are totally contaminated with the character assassinating disciplinary intent clearly revealed on the face of the original "Order". Nor can such subsequent voluntary actions moot the case. *United States v. W.T. Grant Co., et al.*, 345 U.S. 629, 97 L.Ed 1303, 73 S.Ct. 894 (1953).

The record was complete when the "Order" was signed, filed and served. It is either legal and valid or it is illegal and unconstitutional.

The strange "Order" or Writ discloses clearly on its face that the legality and ethicality of its unconstitutional secret issuance without notice, without trial, without even elementary due process, and without a word of competent evidence had been fully considered and that it was deliberately entered by four of the five sitting Judges.

Their premeditated unlawful action is a monstrous violation of all traditional American concepts of justice and judicial decorum. They convicted a United States District Judge of official dereliction and unfitness and prohibited him from performing his official duties. They recited half-truths which they knew at the time would falsely assassinate his character and hold him up to public scorn.

The Circuit Judges signed the punitive Writ with full knowledge that their act was a violation of the laws of the United States and the District Judge's Constitutional rights. The "Order" shows on its face that it was expressly designed to impede and obstruct him in the performance of his official duties and irreparably damage his reputation as an honorable and competent judge.

There is neither moral nor legal defense available to them. They deliberately lent their names and official power to the most shocking un-American proceeding ever conducted by members of the Federal judiciary. The deliberate aberrant action torments one's powers of logic and rationality.

While it seems incredible that the judges of the Tenth Court of Appeals could have acted so irrationally and improvidently, such is the undenied and undeniable fact. The District Judge is neither derelict, incompetent nor an unbending recalcitrant. His sole purpose in this action is to help preserve the sanctity of our constitutional Federal judicial system. Otherwise he would not have come here and would not now be here.

The principal issues are: Do Circuit Courts or Judicial Councils have authority to discipline District Judges by the entry of punitive Writs or otherwise? Are District Judges entitled to the same due process as other citizens? Does this Court approve arrogant and unbridled assumption and abuse of judicial power? Does this Court approve judicial usurpation of the powers of the Legislative branch? Does this Court approve intemperate wholly unfounded character assassination of a United States District Judge by Circuit Judges who claim to act as a Judicial Council?

The Constitution and the statutes of the United States creating Judicial Councils speak quite clearly. Assuming that the United States District Judge was derelict and unfit, it cannot seriously be contended that the Circuit Judges designating themselves a Judicial Council had the power to enter the vicious "Order" under any circumstances and certainly not without due process.

Nor did the members of the Council, each of whom designated himself "Circuit Judge" when he signed the "Order", if sitting as a Court of Appeals, have the Constitutional or statutory power to enter the Writ even had Constitutional due process been accorded the District Judge.

The "Order", if valid, constituted in common legal terminology a Star Chamber Bill of Attainder and a judicial multiple Writ of Prohibition and Mandamus in 163 cases in various stages of the judicial process in which the District Judge was then actually sitting and over which he had lawfully acquired exclusive jurisdiction.

The Writ was ordered filed with both Circuit and District Court Clerks. It was released immediately to news media. Petitioner first learned of it from bold headlines in the nationwide press and from radio and television newscasts. The following day he was subjected to the needless indignity of having the Writ served on him by the United States Marshal at the specific direction of the Circuit Judges.

The effect on the District Judge and on his jurisdiction over the cases in which he was sitting in which the public and the litigants were the real parties in interest was devastating. It was just as devastating as if it had been entered by the Court of Appeals which had potential appellate and review jurisdiction over the cases.

Had the Circuit Judges designated themselves "Pastime Supervisory Council" and placed the word "Circuit Player" under their signatures, the action would have been harmless and amusing. The United States District Judge could have smiled and ignored the order. But when they signed the "Order" each designated himself "Circuit Judge". They

then filed it in the Offices of the Clerk of the Court of Appeals and the Clerk of the District Court and ordered it served by the United States Marshal which invested it with the verity, dignity and legal gravity of a valid judicial Writ and a criminal conviction and sentence by the Tenth Court of Appeals. Thus it was the abuse of their power as Circuit Judges that shook the foundations of the judicial system.

Since the Council "Order" was in fact a judicial Writ signed by Circuit Judges as such, this Court will peer through the veil to the real source of the power which was so ruthlessly abused. The judges cannot hide behind their self-assumed mask.

This Court has power to issue the Writ sought by Petitioner by virtue of Article III Section 2 Clause 2 of the Constitution and Title 18 USC 1651 (a) in aid of its potential appellate and review jurisdiction of the 163 cases affected by the multiple Writ of Prohibition. *LaBuy v. Howes Leather Co.*, 352 U.S. 249, 1 L.Ed.2d 290, 77 S.Ct. 309. The Court has the inherent power to prevent unlawful assumption and abuse of power and obstruction of justice by inferior judges as well as others and has the inherent power to protect the jurisdiction of a United States District Judge. It also has the power and duty to secure to Petitioner his Constitutional rights as a citizen.

By the entry of the Writ which was such a flagrant corruption of the judicial process the indicting judges invited the filing of this action. Their failure to face up to and meet promptly the issues presented and their devious puerile effort tc change, obscure and evade the issues and delay decision by the injection of immaterial after-the-fact matter *dehors the record* has been unbecoming and irreparably prejudicial to Petitioner's rights.

When the defamed District Judge, in an effort to defend and preserve his jurisdiction and carry out what he considered to be the responsibilities and duties of his official

position, asked this Court for relief instead of going begging to the "supervising" Circuit Judges as they anticipated he would, they quickly retreated from their untenable position But they had not the grace to retract their defamatory statements and findings of dereliction and unfitness, based only on recited, misleading half-truths, when the whole truth, then and now well known to them, belies their findings.

Their retreat falls far short of a forthright gentlemanly retraction and a frank admission that the findings were erroneous and the issuance of the Writ unconstitutional, illegal and improvident. They have not shown the courage and humility to be expected of strong men who have made an honest mistake. Rather, they have reacted as children caught with a hand in the cookie jar.

Lawyers have the ethical duty to be completely honest and straightforward with the Court and to meet the issues forthrightly and promptly. Judges are bound by even higher standards and it is vital that they be held to strict probity. Especially is this true where their calculated and gratuitous action has outraged judicial propriety.

A member of the trial judiciary has been convicted and sentenced without trial, has waited patiently, each Monday hoping for an adjudication redressing his wrongs and reaffirming his official status. He has felt more and more each week the weight of his self-imposed judicial restraint when adjudication was not forthcoming.

Since a fourth term of Court has drawn to a close and his urgent request for relief has grown another year older he is forced to the conclusion that the unethical tactics of the Council have actually misled the Court as to the real issues involved and that he should make this final attempt to clarify them.

For this reason he has sincerely and respectfully endeavored to restate the issues in their true light. If he has failed to make it unmistakably clear that he is entitled to the redress sought against the aberrant action of the Circuit Judges he nevertheless feels that he has now quite fully

performed his official duty to defend his jurisdiction and personally would prefer not to pursue the matter further.

But he does feel strongly the duty to pursue it in behalf of all other District Judges and the sanctity of our Constitutional form of government and respectfully requests that the matter be decided on its merits and the real issues clearly resolved and adjudicated.

If approved by this Court, the "Order" changes with four strokes of the pen the entire statutory law relative to the functions of Circuit and District Judges. It clearly violates the Constitutional concept of Division of Powers and completely destroys the independence of trial judges. The power to "supervise" a judge is the power to control his conduct which experience teaches inevitably leads to the power to control his judicial decisions.

Legislation is now pending in Congress initiated and strongly supported by those who seek the power to "supervise" trial judges and thereby destroy their independence. Indeed, the punitive "Order" here was carefully fashioned by some who wish to concentrate the judicial power of the United States in a few. They intended for the illegal bludgeoning of Petitioner to furnish a glaring example of the need for such proposed unconstitutional legislation. It was at their behest that the "Order" was executed and issued by the Tenth Judicial Council.

This proposed legislation would change the whole plan of the Constitution by providing some "Especially Qualified Supervising Judges" to execute the Constitutional function of policing the judiciary which our forefathers who themselves had suffered under the heel of tyrants and who wished to insure "the liberty of the people by guaranteeing that they have judges wholly independent", saw fit to vest, to a very limited extent only, in the Congress.

The Act creating Judicial Councils, Title 28 USC Section 332, is the root of the evil. It was fashioned and piloted through an unsuspecting Congress by Circuit Judges avid

for the power to "supervise". Of course Congress read no such power in it, but those Circuit Judges did.

Rather than enactment of the proposed legislation, the Congress should instead totally abolish Judicial Councils. The very thought that it is a proper function of a judge to exercise any kind of supervision whatever over another judge is absurd and should be completely excised from the thinking of those sincerely interested in improving our judicial system. Those who would make second class citizens of trial judges do not remotely understand what a judge is—what he should be and what he *must* be.

No amount of oral argument can make the issues in this action clearer. The law is crystal clear and further presentation of the facts by oral argument without going entirely *outside* of the record could only be repetition of matter heretofore fully presented by the papers heretofore filed.

Since it is apparent that oral argument can throw no additional light on the pertinent issues, a request by Respondent for oral argument can only be attributed to the desire to obtain the halls of this Court as a forum to argue the merits of the proposed legislation.

The Constitutional forum for those who wish to change the jurisdiction and functions of Circuit and District Judges is the Congress of the United States. It is not the Judicial Council of the Tenth Circuit nor is it this Court of last resort.

The "Circuit Judges" have already had more than three years to face up to the issues. Their time to respond expired February 6, 1966. After their fashion they responded February 9, 1966. The record reflects clearly that they have failed to meet their ethical and official obligation to the Court and to Petitioner. Unless it is thought that they are entitled to greater rights than other citizens brought befor this Court they should not now be invited to speak further nor permitted to do so.

To delay this case further for oral argument will constitute a travesty on justice. Justice delayed is justice denied. This Court has never permitted such a violation of a citizen's Constitutional rights to go long uncorrected, particularly one that offends so severely Constitutional division of powers and due process of law.

Further delay will appear to the public to be a tacit approval by this Court of the un-American abuse of power and the libelous findings against the District Judge and cause additional loss of public respect for the dignity and integrity of the judiciary as a whole. It will also make it appear that no United States District Judge can in the future expect from this Court immediate protection of his jurisdiction and his Constitutional rights should they be obstructed by a similar tyrannical whim of Circuit Judges.

As a member of the Bar of this Court since April 13, 1926, and as a United States District Judge since May 13, 1943, Petitioner wishes to take full responsibility for the filing of this paper and the candid statements made here. For that reason he files it *pro se*. He sincerely believes that a careful reading of the pleadings and briefs filed by Counsel for Respondent and those filed by Petitioner's erudite counsel together with the concise and convincing brief filed by Mr. Shipley as *Amicus Curiae* on June 12, 1969, will justify the filing.

In view of the foregoing, Petitioner now respectfully requests this Court to reaffirm immediately the continuing power of his office, thus restoring to the United States his usefulness as a District Judge and his good name as a competent judge in order to, insofar as is at this time possible, repair the damage to the judicial system occasioned by the entry of the "cruel and unusual" Bill of Attainder and Writ of Prohibition which does such violence to Article I Section 1 and Section 2 clause 5, Section 3 clause 6, Section 8 clause 9 and clause 18, and Section 9 clause 3; Article II Section 2 clause 2 and Sections 3 and 4; Article III Section 1 and Section 2 clause 2 and clause 3; Article VI clause 2 and clause 3;

Amendments IV, V, VI, VIII and XIV of the Constitution of the United States of America and its concepts of freedom and justice and the safeguards placed therein to Guarantee them to every citizen.

The Constitution and laws made in pursuance thereof is "the supreme Law of the Land". It was adopted "in order to . . . establish Justice . . . and secure the Blessings of Liberty."

To Safeguard and Guarantee justice and liberty to all citizens alike, Bills of Attainder are prohibited, due process and speedy trial are guaranteed, all officers and judges are required to take an oath to support and defend it and Governmental powers are purposefully divided between the Legislative, Executive and Judicial branches.

It should not be too presumptuous to assume that the Circuit Judges who signed the "Order" were familiar with the Constitution and laws. Thus is is not unfair to say that they knowingly and intentionally violated its most important provisions which were placed there for the very purpose of establishing and insuring Justice and Freedom to all.

It also seems proper to call attention to the Constitutional mandate contained in Article II Section 3 which provides that the Executive Department "shall take care that the laws be faithfully executed".

This provision was ignored by the former Solicitor General who appeared as counsel in defense of the unconstitutional and unlawful acts of Respondent. The only question before the Court was the power of the Council to issue the "Order", its legal validity. Neither guilt nor unfitness was involved. Yet the former Solicitor General took advantage of the occasion to go entirely outside of the record and personally make gratuitous unfounded defamatory statements about Petitioner including a subtle reference to 28 USC 372(b), and to insidiously express personal inflammatory opinions. (See Memorandum Opposing Stay filed

January 13, 1966 and attached letter.) This seems incredible but as in the case of the incredible actions of the Circuit Judges it is indisputable. It also is in writing and part of the record.

These gratuitous groundless defamatory statements and opinions are a shocking departure from the customary bounds of accepted standards of ethical practice. The entire Memorandum Opposing Stay furnishes an ideal example of the studied effort of Respondent and its counsel to mislead the Court. Confidence in these misleading and frightening statements and opinions of the former Solicitor General apparently led the Court to temporarily deny stay of the invalid "Order."

In view of this Constitutional mandate, the Department of Justice, now under new direction, may wish to consider what course it should now elect to pursue with reference to the Constitutionally indefensible action of the Circuit Judges who have also taken the oath to support and defend the "supreme Law" but who have so deliberately violated it in these vital areas.

The preparation and filing of this paper has been burdensome but the duty for one trained in the old school was clear, the time for judicial restraint and polite understatement long past. The time had come "to talk of many things." Petitioner regrets the necessity but apologizes only for the style if it seems dogmatic. He did not initiate nor welcome the confrontation and has not spoken for himself nor as a judge but has spoken as an advocate for others in behalf of a great principle must speak, with absolute candor and without fear as becomes both lawyer and judge. The high position of judge was not created for the judge but for those seeking justice. The statements may seem blunt and harsh but they are made without any bitterness or rancor whatever, with humility, with compassion for those involved, with great respect for their official positions and for this Court with its awesome duty. He has not yet lost his equanimity nor his sense of humor and hopes his adversaries have not.

Petitioner waives oral argument, submits the matter to the Court on the record, and respectfully prays the Court to set aside its Order for Oral Argument and for prompt relief.

Respectfully submitted,

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